

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Office of the General Counsel
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DATE: February 6, 2008

SUBJECT: Mediation Week: Resolution Recognizing the Benefits of Mediation and
Court Mediation Programs (Action Required)

Issue Statement

California courts offer mediation as an alternative to formal adjudication in civil, family, juvenile, and other actions and proceedings. The Governor, the Legislature, the State Bar Board of Governors, and local government bodies traditionally have recognized the third week of March as "Mediation Week." Last year, the Judicial Council joined in recognizing Mediation Week. The council's recognition of Mediation Week again this year will encourage courts to implement and improve mediation programs, promote public access to and use of those programs, and acknowledge the persons and organizations that have made the programs successful.

Recommendation

Staff recommends that the Judicial Council adopt the attached resolution, effective February 22, 2008, recognizing March 16–22, 2008, as Mediation Week.

Rationale for Recommendation

Mediation is a process in which a neutral third person facilitates communication between the parties to a dispute to help them reach a voluntary and mutually acceptable resolution. Mediation is less formal than adjudication and allows the parties a greater opportunity to express the full range of their concerns and to determine the resolution of their disputes. Mediation can thereby preserve and improve personal relationships and reduce and redress the violation of public and private rights.

California courts increasingly encourage and offer mediation for a broad range of issues. Community and court mediation programs for neighborhood, civil, child custody, juvenile dependency, juvenile delinquency, and criminal matters are highlighted below.

Mediation of court cases offers many potential benefits to litigants, the courts, and the public. These include increasing the interested parties' satisfaction with the litigation process and the courts and their voluntary compliance with the terms of resolution. At the same time, mediation may reduce pretrial motions and trials, reduce the time from the filing of an action to disposition, and reduce recidivism and future disputes between parties. Mediation thereby reduces litigants' costs and court workloads, while increasing litigant satisfaction.

The efforts of many dedicated judicial officers, court staff, and justice partners are critical to the success and benefits of court mediation programs. Many courts collaborate with local government agencies, community dispute resolution organizations, state and local bar associations, professional mediators, and mediation organizations to make mediation available. Notably, many court program mediations are conducted by mediators who serve pro bono or for nominal compensation.

Informing the public about the nature, availability, and benefits of mediation is also important to ensuring access to and use of these programs. In particular, the Public Trust and Confidence Study recommended that “[f]ormal, court-sanctioned alternatives to court adjudication should be made widely known among recent immigrants and other groups identified in the survey as often unaware of their availability.”¹

Since 1993, many California government officials and agencies have recognized the third week of March as Mediation Week. The Governor has issued a proclamation or letter recognizing Mediation Week every year from 1993 through 2007, other than in 2000. The Senate and Assembly have issued at least one joint resolution recognizing Mediation Week, and the Assembly has issued others. The State Bar Board of Governors; the boards of supervisors of the counties of Los Angeles, San Diego, San Mateo, and Stanislaus; and the Santa Barbara City Council all have recognized Mediation Week in one or more years. A number of California courts have previously held Mediation Week events, and some are already planning to do so this year.

The Judicial Council joined in the recognition of Mediation Week in 2007 by adopting a resolution recognizing the benefits and success of court mediation programs, commending the efforts of all those who make mediation and mediation programs available to the citizens of California, and encouraging the courts to recognize those

¹ *Trust and Confidence in the California Courts*, National Center for State Courts (commissioned by the Administrative Office of the Courts on behalf of the Judicial Council of California), September 2005, pp. 4–5, 20 (available online at www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf).

individuals and to publicize their mediation programs during Mediation Week. The Administrative Office of the Courts encouraged, supported, and publicized court mediation programs and local Mediation Week activities by sending the council's resolution to local bar leaders; through announcements, resources, and articles in *Court News Update (CNU)*, *California Court News (CCN)*, *California Courts Review (CCR)*, and the Serranus ADR Resource Center; by launching new alternative dispute resolution (ADR) pages on the California Courts Web site; and by statewide news releases.

Judicial Council recognition of Mediation Week in 2008 again will increase the attention focused on mediation and particularly highlight the availability and benefits of court mediation programs, thereby promoting public access to and use of those programs. It also will provide an occasion to acknowledge the judicial officers, court staff, and justice partners who make mediation available and successful.

Community dispute resolution programs and the courts

For more than 30 years, California community dispute resolution organizations have used mediation to address neighborhood disputes involving matters such as fences, trees, parking, pets, noise, property maintenance, harassment, vandalism, and graffiti. These mediations have resolved countless conflicts before they escalated into more serious problems, without the necessity for any legal proceedings.

Community dispute resolution organizations also have been instrumental in the development and success of mediation programs to resolve disputes pending in courts throughout the state. Often in conjunction with local bar associations, these organizations have helped courts establish and operate mediation programs, including training and coordinating volunteer mediators who serve in court programs.

Mediation programs for civil cases

In 1993, the Legislature found and declared that it is in the public interest for mediation to be encouraged and used where appropriate by the courts. (See Code Civ. Proc., § 1775(c).) California superior courts currently offer mediation programs for a variety of civil case types, including limited and unlimited jurisdiction actions and small claims, unlawful detainer, and civil harassment proceedings. The California Courts of Appeal also offer mediation for civil cases in some districts.

An award-winning Judicial Council study found that early mediation of civil cases increases litigant satisfaction with the courts while reducing litigant costs, disposition times, trial rates, and court workloads.² In response to this study, the council adopted

² See *Evaluation of the Early Mediation Pilot Programs*, Judicial Council of California, Administrative Office of the Courts, Office of the General Counsel, February 27, 2004, pp. xix–xxii (available online at www.courtinfo.ca.gov/reference/documents/empprept.pdf). The Judicial Council received the Center for Public Resources (CPR) Institute for Dispute Resolution's Outstanding Practical Achievement Award for the contribution of this report to the field of dispute resolution. (See www.cpradr.org/pressroom/press31.pdf.)

Standard of Judicial Administration 10.70(a), encouraging all superior courts to implement mediation programs for civil cases as part of their core operations.

To promote this goal, the Judicial Council has allocated Judicial Administration Efficiency and Modernization Funds to help superior courts plan, implement, and improve mediation and other settlement programs for civil cases. In the past three fiscal years, 37 superior courts have received funding to plan a new program, to implement or improve an existing program, or to do both. This funding currently is being offered for the fourth consecutive year.

Mediation programs for child custody and juvenile dependency cases

Mediation is a significant way that the courts provide both fairness and access to parties in highly emotional and potentially volatile child custody and visitation disputes. Under a 1981 legislative mandate, all trial courts must provide child custody mediation in family court cases where child custody or visitation is in dispute.

Rule 5.210 of the California Rules of Court provides that the mediator must facilitate the family's transition and reduce acrimony by helping the parties improve their communication skills, focus on the child's needs and areas of stability, identify the family's strengths, and locate counseling or other services. This rule requires that the mediation process include providing information or education that facilitates the parties' informed and self-determined decision-making and providing assistance in developing a comprehensive parenting plan. This rule also allows the mediator to interview the children, at the mediator's discretion.

More than 400 court-connected family mediators provide mediation services to families and children in approximately 100,000 cases annually. In the latest survey, 87 percent of respondents reported that mediation is a good way to come up with a parenting plan and that they would recommend the process to a friend who has a custody or visitation problem.³

Mediation also is currently used in about half of California's juvenile dependency courts. In juvenile dependency mediation, a specially trained neutral person helps the family, social worker, attorneys, and other interested parties understand and resolve the problems and concerns in the case. The issues that may be mediated include jurisdiction and petition language, disposition, the child's temporary and permanent placement, services for the family (e.g., counseling, drug or alcohol assessment and treatment, and parenting classes), and exit orders at dismissal.⁴

³ *Client Feedback in California Court-Based Child Custody Mediation*. Administrative Office of the Courts, Center for Families, Children & the Courts, 2004, p.5 (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/Clientfdbk.pdf).

⁴ *Court-Based Juvenile Dependency Mediation in California*. Administrative Office of the Courts, Center for Families, Children & the Courts, 2003 (available online at www.courtinfo.ca.gov/programs/cfcc/pdffiles/JDM.pdf).

Restorative justice in juvenile delinquency and criminal matters

Mediation also is a key component of restorative justice programs in juvenile delinquency and criminal proceedings.⁵ In a 2006 survey about delinquency court operations, approximately half of the 46 courts that responded indicated they used restorative justice programs such as victim offender mediation (23 courts), family group conferencing (22 courts), or neighborhood accountability boards (18 courts).⁶

Many restorative justice programs generally focus on low-level offenses. But mediation and mediation techniques also are being used to resolve more serious offenses and conflicts involving gangs. For example, the Superior Court of San Mateo County, in collaboration with the local bar and community dispute resolution program, provides a juvenile mediation program for incidents involving victims of juvenile violence, including victims of gang violence. Several California state and local government agencies, universities, community dispute resolution programs, and private foundations also operate or support programs that use mediation techniques to address gang violence.

Alternative Actions Considered

The Judicial Council could elect not to recognize Mediation Week. However, staff believes that recognition of Mediation Week will provide significant benefits without any disadvantages or significant costs.

Comments From Interested Parties

The resolution recognizing Mediation Week does not require circulation for comment.

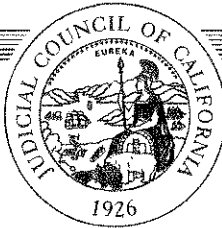
Implementation Requirements and Costs

Judicial Council recognition of Mediation Week will not require any implementation action by the courts. Courts that elect to hold Mediation Week activities will spend some time and may incur some expense doing so. AOC staff also will spend some time planning and promoting Mediation Week activities, but the AOC will not incur any significant new expenses as a result of the Judicial Council's recognition of Mediation Week.

Attachment

⁵ Restorative justice, or balanced and restorative justice, is a philosophical framework focused on the belief that crime affects many people—the offender, the victim, and the community—and that justice should be a collaborative process in which all parties have an equal opportunity to have their voices heard and their needs met. See *Balanced and Restorative Justice: An Information Manual for California*, Judicial Council of California, Administrative Office of the Courts, Center for Families, Children & the Courts, 2006, pp. 21–22, (available online at www.courtinfo.ca.gov/programs/ccjp/documents/BARJManual3.pdf).

⁶ Unpublished responses to *2006 Survey of Delinquency Court Operation*, Administrative Office of the Courts, Center for Families, Children & the Courts.



JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

Resolution
Recognizing Mediation Week

MARCH 16–22, 2008

Whereas mediation is a dispute resolution process in which a neutral third person facilitates communication between the parties to a dispute to help them reach a voluntary and mutually acceptable agreement;

Whereas during the past 30 years, California community dispute resolution organizations have used mediation to resolve countless neighborhood disputes before formal legal proceedings were initiated and have been instrumental in the development and operation of mediation programs to resolve legal proceedings filed with the courts;

Whereas during the past 25 years, California trial and appellate courts have increasingly encouraged, offered, and provided mediation to assist litigants in resolving a broad array of disputes that are filed with the courts, including civil, family, juvenile, and criminal matters;

Whereas mediation offers many potential benefits to litigants, the courts, and the public, including increasing participants' satisfaction with the dispute resolution process and outcome, while reducing court filings, pretrial motions and trials, the time from the filing of an action to disposition, litigants' costs, court workloads, future disputes between the parties, and recidivism;

Whereas the availability and success of court mediation programs are largely attributable to the efforts of judicial officers, court staff, and justice partners, including community dispute resolution organizations, local government agencies, state and local bar associations, mediation organizations, and individual mediators, many of whom contribute significant time and resources toward conducting mediations;

Whereas widespread public awareness of the nature, availability, and benefits of mediation and court mediation programs is important to ensuring the use of these programs and access to justice; and

Whereas the Governor and other California state and local officials and agencies traditionally recognize the third week of March as Mediation Week;

Now, therefore, be it resolved that the Judicial Council of California and the Administrative Office of the Courts recognize the week of March 16 through 22, 2008, as Mediation Week, commend the efforts of the individuals and organizations that make mediation and mediation programs available to the citizens of California, and encourage the courts to recognize those individuals and publicize their mediation programs during Mediation Week.

I have hereunto set my hand this 22nd day of February, 2008

Attest:

RONALD M. GEORGE
Chief Justice of California and
Chair of the Judicial Council of California

WILLIAM C. VICKREY
Administrative Director of the Courts